## CCRB INVESTIGATIVE RECOMMENDATION

Investigator:	Te	am:	CCRB Case #:		Force		Discourt.	☐ U.S.
Robert Bryan		uad #13	201907786		Abuse		O.L.	✓ Injury
Incident Date(s)	Lo	ocation of Incident:		F	Precinct:	18]	Mo. SOL	EO SOL
Sunday, 08/25/2019 11:20 PM					83	2/2	25/2021	10/12/2021
Date/Time CV Reported	C	V Reported At:	How CV Reported	d:	Date/Time	e Rece	ived at CC	RB
Mon, 08/26/2019 1:03 AM	IA	В	Phone		Tue, 09/03	3/2019	11:03 AM	1
Complainant/Victim	Туре	Home Add	ress					
Subject Officer(s)	Shield	TaxID	Command					
1. POM Alexander Leon	16065	949885	083 PCT					
2. POM Dustin Olivos	19950	950978	083 PCT					
3. POM Thomas Coleman	29737	953765	083 PCT					
4. Officers								
Witness Officer(s)	Shield No	Tax No	Cmd Name					
1. POM Duane Seaton	24810	962791	083 PCT					
2. POM Kurlon Parris	24765	962661	083 PCT					
3. POM Timothy Deck	19638	958482	083 PCT					
4. POM Christophe Emmart	13299	960496	083 PCT					
5. POM Jeffrey Chin	16758	944434	083 PCT					
6. POF Ashley Slater	20951	963282	083 PCT					
7. POM Thomas Donnelly	04376	960473	083 PCT					
8. POM Joel Nunez	25963	965373	083 PCT					
Officer(s)	Allegation				Inv	estiga	tor Recor	nmendation
A. Officers	Abuse: Office \$ 87(2)(b)	cers entered	in Brooklyn					
B.POM Thomas Coleman	Discourtesy:	Police Officer The	omas Coleman spoke					
C. Officers	Force: Offic	ers used physical fo	orce against § 87(2)(b)					
D.POM Dustin Olivos	Force: Police against § 87(2)		livos used physical for	orce				
E.POM Alexander Leon	Force: Police against § 87(2)		er Leon used a choke	hold				
F.POM Alexander Leon	Force: Polices breat		er Leon restricted § 870	(2)(b)				
G.POM Thomas Coleman	Discourtesy: discourteous		omas Coleman spoke	e				
H.POM Dustin Olivos	Force: Police § 87(2)(b) § 87(2)		livos used a taser aga	ainst				
I.POM Dustin Olivos	Force: Police 8 87(2)(b)	e Officer Dustin O	livos used a taser aga	ainst				

Officer(s)	Allegation	Investigator Recommendation
J.POM Dustin Olivos	Force: Police Officer Dustin Olivos used a Taser on §87(2)(b)	
K.POM Thomas Coleman	Force: Police Officer Thomas Coleman used a Taser on \$87(2)(b) \$87(2)	
L.POM Thomas Coleman	Force: Police Officer Thomas Coleman used a Taser on § 87(2)(b)	
M.POM Thomas Coleman	Force: Police Officer Thomas Coleman used a Taser on § 87(2)(b)	
N.POM Thomas Coleman	Force: Police Officer Thomas Coleman used a Taser on \$87(2)(b)	

## **Case Summary**

On August 26, 2019, Sgt. Kevin Mahones of the 83 Precinct called IAB to report that force was used against while he was being taken into police custody. The IAB log was received at the CCRB on September 3, 2019.

On August 25, 2019, at approximately 11:20 p.m., Police Officer Thomas Coleman, Police Officer Dustin
Olivos, Police Officer Duane Seaton, Police Officer Kurlon Parris, Police Officer Alexander Leon, Police
Officers Timothy Deck, Police Officers Christopher Emmart, and Police Officer Thomas Donnelly, all of
the 83 <sup>rd</sup> Precinct, arrived at \$87(2)(b) in Brooklyn, in response to a 911 caller reporting
that a man was assaulting a woman inside. Officers entered the apartment, where \$87(2)(b) was inside
with his girlfriend, §87(2)(b) (Allegation A – Abuse of Authority – Entry; §87(2)(g)
Coleman asked *** "Are you out of your fucking mind?" (Allegation B – Discourtesy – Word;
Officers used physical force against (Allegation C – Force – Physical Force;
PO Olivos used physical force against (Allegation D – Force – Physical Force;
PO Leon placed 887(2)(b) in a chokehold (Allegation E – Force – Chokehold;
and restricted his breathing (Allegation F - Force – Restricted Breathing;
PO Coleman told § 87(2)(b) "My man, you're about to get fucking tased" (Allegation
G – Discourtesy – Word; S87(2)(g) PO Olivos tased S87(2)(b) three times (Allegation H – Force –
Nonlethal restraining device; S87(2)(g) Allegation I-J – Force – Nonlethal restraining device;
PO Coleman tased § 87(2)(b) four times (Allegation K – Force – Nonlethal
restraining device; 887(2)(9) Allegations L-N – Force – Nonlethal restraining device;
Police Officer Jeffrey Chin, Police Officer Ashley Slater, and Police Officer Joel
all of the 83 <sup>rd</sup> Precinct, arrived while the other officers were restraining sa7(2)(b) was
arrested and charged with assault, resisting arrest, and obstructing governmental administration.
§ 87(2)(b)

The investigation obtained BWC footage from PO Coleman, PO Seaton, PO Parris, PO Leon, PO Emmart, PO Deck, PO Olivos, PO Donnelly, PO Chin, PO 587(2)(5) and PO Slater. The BWC footage is attached to IAs 59-73 (**Board Review 01-15**) and summarized in IAs 122 and 127-130 (**Board Review 16-20**).

## **Findings and Recommendations**

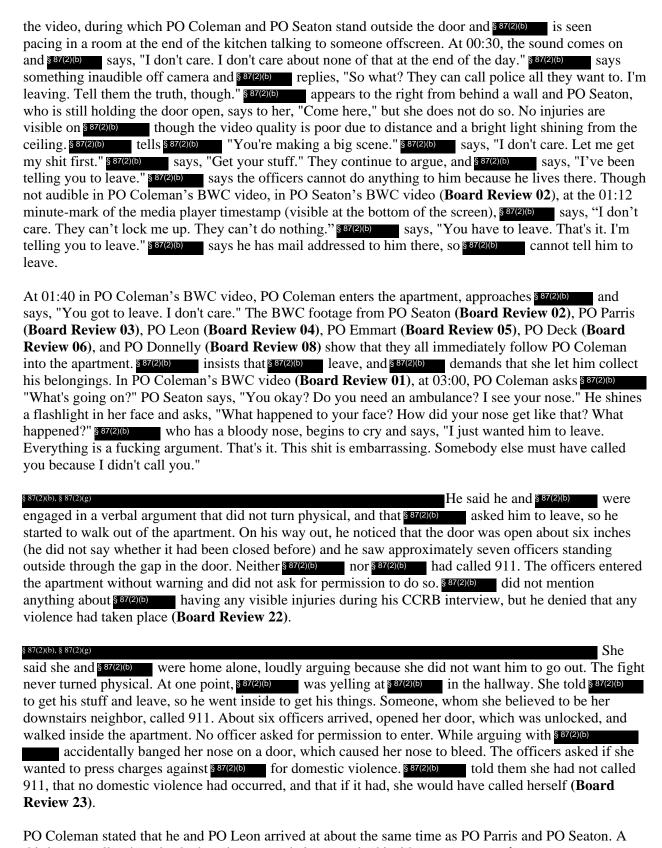
Allegation (A) Abuse of Authority: Officers entered \$87(2)(b) in Brooklyn.

The 911 call audio revealed that an anonymous female caller said she lived at \$87(2)(b) .

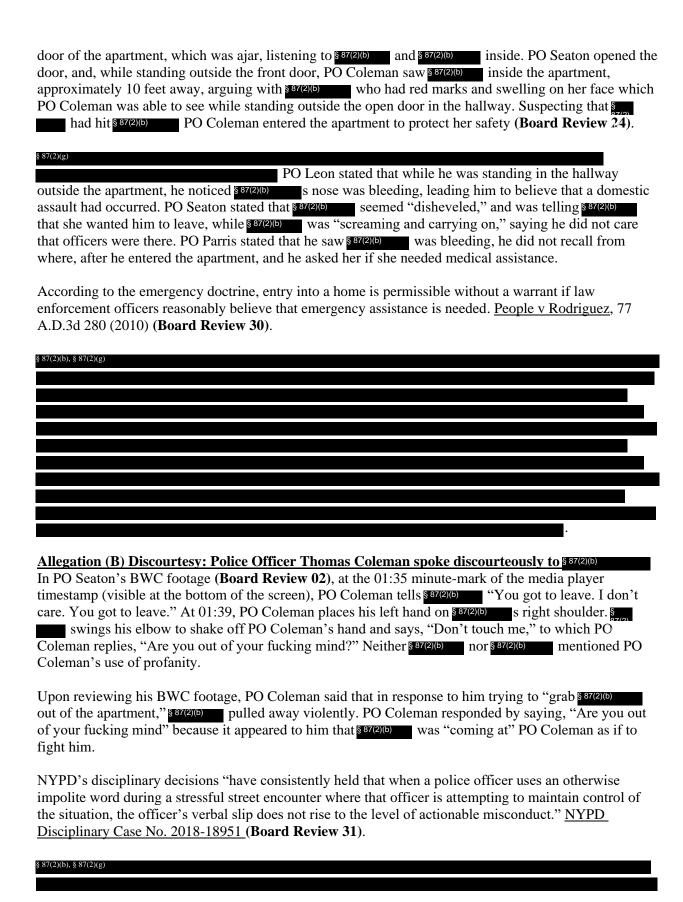
and that her neighbors in Apt. were fighting. She said she called the police on previous occasions to report their fights, but that this time she thought the man was beating the woman up. The caller said she could hear the woman crying and things breaking, though she did not know if anyone was hurt. She said her neighbors had two children, a year-old and a \$87(2)-year-old. (Board Review 21).

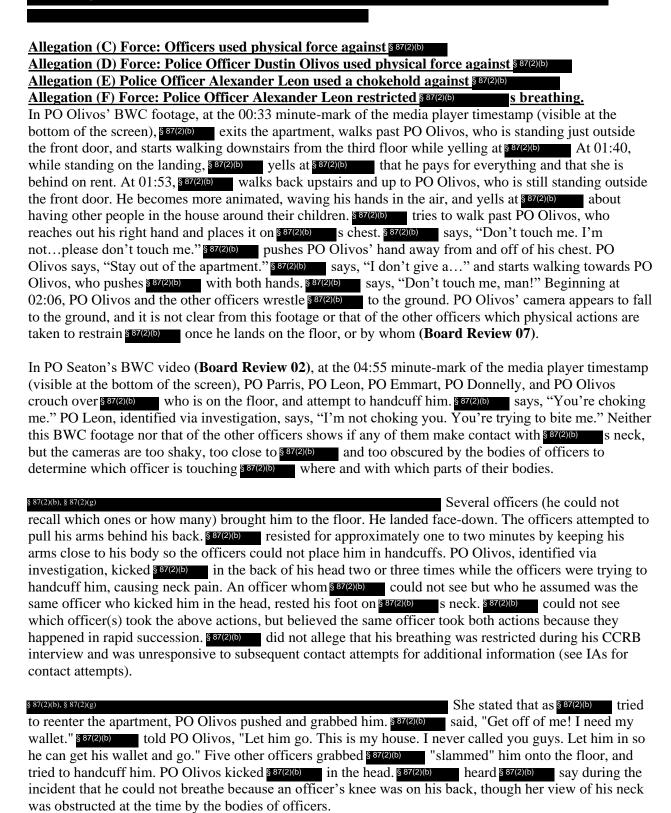
The ICAD document for the Event related to this incident confirms that it was relayed to the officers that an anonymous female caller said someone was being assaulted at \$87(2)(b) s and \$87(2)(b) s apartment and that children were present. The female caller asked to remain anonymous and to not speak with the responding officers. Fourteen minutes elapsed between the 911 call and the officers requesting an ambulance for \$87(2)(b) (Board Review 44).

In PO Coleman's BWC video (**Board Review 01**), at the 00:28 minute-mark of the media player timestamp (visible at the bottom of the screen), PO Seaton opens \$87(2)(b) and \$87(2)(b) are sunlocked apartment front door. The officers are not captured knocking. There is no audio for the first 30 seconds of



third-party caller thought she heard someone being assaulted inside \$87(2)(b) s apartment, though none of the officers spoke directly to the 911 caller. PO Coleman stood outside the



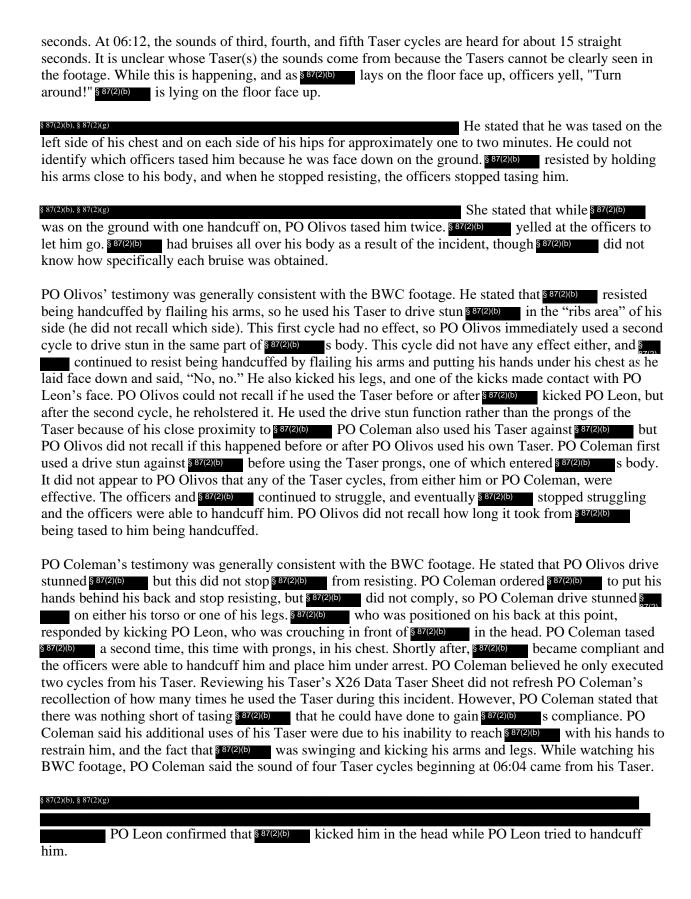


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Following this incident and while in police custody, \$87(2)(b) was seen at \$87(2)(b) Hospital. He arrived approximately one hour after the incident. He complained of a throbbing headache. He had no blurry vision, no weakness, no loss of consciousness, no chest pain, no palpitations, and no shortness of breath. He had neck pain but no limitation of movement. He had a bruise over his left eyebrow, another bruise on his right forehead, and a third bruise on his lower lip (Board Review 32). § 87(2)(b) did not mention these bruises during his CCRB interview and was unresponsive to subsequent contact attempts to determine which actions caused them.] When § 87(2)(b) returned upstairs, PO Olivos put his hand up and said, "You cannot come in here." He did not want \$87(2)(6) to enter the apartment because officers were inside trying to figure out what was going on. PO said, "Don't touch me" and pushed PO Olivos. PO Olivos grabbed \$87(2)(b) s right arm and pulled him down to the floor while PO Coleman did the same with \$87(2)(b) s left arm. \$87(2)(b) eventually stopped resisting enough for PO Olivos and other officers (he did not recall which ones) to handcuff him. PO Olivos did not recall exactly how he and the other officer overcame \$87(2)(5) s resistance, though he denied kicking in any part of his body and denied resting his foot on \$87(2)(b) s neck. PO Olivos denied seeing any other officer do these things. [87(2)(b)] s breathing did not appear to be restricted at any point and until he watched BWC footage of the incident during his CCRB interview, PO Olivos did not recall saying anything about having trouble breathing (**Board Review 26**). PO Coleman, PO Parris, PO Seaton, PO Emmart, and PO Leon all denied witnessing PO Olivos kick \$87(2)(b) or rest his feet on \$ s neck, and they each denied taking either of these actions themselves (Board Review 20-25). They all denied that § 87(2)(b) s breathing appeared to be restricted during this incident. PO Leon's testimony was generally consistent with the BWC footage. He identified himself as the officer who, in PO Seaton's BWC footage, replies to \$87(2)(b) s statement, "You're choking me," with, "I'm not choking you. You're trying to bite me." PO Leon said he applied pressure to \$87(2)(6) s face, by pushing his hand down on the side of \$87(2)(b) s face so that \$87(2)(b) would not bite him (he did not recall which hand he used or which side of \$87(2)(b) s face he pressed down on). PO Leon thought \$87(2)(b) might bite him because \$87(2)(b) moved his face close to PO Leon's legs. PO Leon did not touch s neck at any point. NYPD Patrol Guide, Procedure 221-01 states that force may be used when it is reasonable to ensure the safety of an officer or civilian and that the application of force must be reasonable under the circumstances (Board Review 33).

§ 87(2)(b), § 87(2)(g)
§ 87(2)(b), § 87(2)(g)
3 01(2)(6), 3 01(2)(6)
Allegation (G) Discourtesy: Police Officer Thomas Coleman spoke discourteously to Sar(2)(b) In PO Coleman's BWC footage (Board Review 01), at the 04:35 minute-mark of the media player timestamp (visible at the bottom of the screen), PO Coleman walks from the kitchen to the front door of the apartment, where officers have just begun to struggle with Sar(2)(b) At 04:58, he holds the door open as PO Olivos and several other officers crouch over sar(2)(b) and attempt to handcuff him. At 05:25, two officers say, "Stop resisting." PO Coleman, who is still standing in the doorway, states, "My man, you're about to get fucking tased." Neither sar(2)(b) nor sar(2)(c) mentioned PO Coleman's use of profanity in their CCRB interviews. However, sar(2)(c) acknowledged resisting being placed in handcuffs by holding his arms close to his body at the point during the incident when this statement was made.
Upon reviewing his BWC footage during his CCRB interview, PO Coleman said he used profanity because he was trying to gain \$87(2)(6) as compliance as he and the other officers tried to handcuff him. All officers interviewed consistently stated that at the time, \$87(2)(6) as was refusing to allow himself to be handcuffed.
NYPD's disciplinary decisions "have consistently held that when a police officer uses an otherwise impolite word during a stressful street encounter where that officer is attempting to maintain control of the situation, the police officer's verbal slip does not rise to the level of actionable misconduct." <a href="NYPD">NYPD</a> <a href="Disciplinary Case No. 2018-18951">Disciplinary Case No. 2018-18951</a> (Board Review 31).
§ 87(2)(b), § 87(2)(g)
\$ 0.127(0), \$ 0.127(g)
Allegation (H) Force: Police Officer Dustin Olivos used a taser against \$\frac{\\$87(2)(6)}{2}\$ \$\frac{\\$87(2)}{2}\$ Allegation (I) Force: Police Officer Dustin Olivos used a taser against \$\frac{\\$87(2)(6)}{2}\$ \$\frac{\\$87(2)}{2}\$ Allegation (K) Force: Police Officer Thomas Coleman used a taser against \$\frac{\\$87(2)(6)}{2}\$ \$\frac{\\$87(2)}{2}\$ Allegation (L) Force: Police Officer Thomas Coleman used a taser against \$\frac{\\$87(2)(6)}{2}\$ \$\frac{\\$87(2)}{2}\$ \$\frac{\\$87(2)}{2}\$ Allegation (M) Force: Police Officer Thomas Coleman used a taser against \$\frac{\\$87(2)(6)}{2}\$ \$\frac{\\$87(2)}{2}\$ \$\
Coleman's BWC tilting towards the floor, where another unidentifiable officer's legs block a clear view
of \$87(2)(b) on the floor. Several officers order \$87(2)(b) to turn around and stop resisting. At 05:45, PO

Olivos is seen holding a Taser in his left hand. At 06:04, the sound of a Taser is heard for about five



The X26 Data Taser Sheet for PO Olivos' Taser (**Board Review 33**) shows that PO Olivos pulled the trigger for two seconds at 11:24:31, for five seconds at 11:24:57, and for five seconds at 11:25:06. The X26 Data Taser Sheet for PO Coleman's Taser (**Board Review 34**) shows that he pulled the trigger for four seconds at 11:39:18, for five seconds at 11:39:54, for five seconds at 11:40:01, and for five seconds at 11:40:06. The times listed on the X-26 Data Taser Sheets do not correspond to the embedded time codes in the BWC footage, making it impossible to ascribe the sound of each Taser cycle to a particular officer. The discrepancies in time between the two X26 Data Taser Sheets suggest that due to an unknown technical error, the Tasers' time codes were not just inconsistent with those embedded in the BWC footage, but with each other as well. As such, they are only useful insofar as they show the number of cycles used for each Taser, the length of each cycle, and the time that elapsed between cycles.

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An AIDED Report was prepared for PO Leon, and notes that \$87(2)(b) kicked PO Leon in the face, causing bruising and substantial pain. PO Leon was removed to \$87(2)(b) Hospital (Board Review 43).
NYPD Patrol Guide, Procedure 221-08 states that Tasers should be used against persons who are actively resisting, against persons exhibiting active aggression, or to prevent individuals from physically injuring themselves or other persons present. Active aggression includes a threat or overt act of an assault through physical or verbal means, coupled with the present ability to carry out the threat or assault, which reasonably indicates that an assault or injury to any person is imminent. Officers must consider the totality of the circumstances, such as the immediacy of the perceived threat or harm to others and whether the subject is actively resisting custody. Officers should use a Taser for one standard cycle (five seconds) while constantly assessing the situation to determine if subsequent cycles are necessary (Board Review 36).
§ 87(2)(b), § 87(2)(g)
Civilian and Officer CCRB Histories
§ 87(2)(b)
DO Colomon has been a mambay of complete for covery vegets and has been the subject of two
<ul> <li>PO Coleman has been a member of service for seven years and has been the subject of two</li> </ul>

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allegations in two previous cases, neither of which were substantiated. PO Coleman's CCRB

- history does not reflect any apparent pattern pertinent to the investigation.
- PO Olivos has been a member of service for eight years and has been the subject of two allegations in one previous case, which is still open. PO Olivos's CCRB history does not reflect any apparent pattern pertinent to the investigation.
- PO Leon has been a member of service for eight years and has been the subject of one allegation in one previous case, which was not substantiated. PO Leon's CCRB history does not reflect any apparent pattern pertinent to the investigation.

## Mediation, Civil and Criminal Histories

- This case was unsuitable for mediation.
- As of December 28, 2020, no Notice of Claim has been filed with the NYC Comptroller's Office regarding this incident (**Board Review 38**).

§ 87(2)(b)			
§ 87(2)(b)			
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Squad <u>13</u>			
Investigator: —	Robert Bryan	Inv. Bryan	07/19/21
C	Signature	Print Title & Name	Date
Squad Leader:	IM Laura Kastner	IM Laura Kastner	07/19/2021
•	Signature	Print Title & Name	Date